

R. S. HANLINE & CO., INC. v. M. DEGARO CO., INC.
PACA Docket. No. R-99-0173.
Decision and Order filed February 9, 2000.

George S. Whitten, Presiding Officer.
Complainant, Pro se.
Respondent, Pro se.
Decision and Order issued by William G. Jenson, Judicial Officer.

Preliminary Statement

This is a reparation proceeding under the Perishable Agricultural Commodities Act, 1930, as amended (7 U.S.C. § 499a *et seq.*). A timely complaint was filed in which Complainant seeks an award of reparation in the amount of \$29,948.64 in connection with transactions in interstate commerce involving perishable produce.

Copies of the Report of Investigation prepared by the Department were served upon the parties. A copy of the formal complaint was served upon Respondent which defaulted in the filing of an answer. However, Respondent filed a timely motion to reopen after default, along with a proposed answer. Respondent's motion and proposed answer were served on Complainant which did not offer any objection to the reopening. Respondent's motion was granted for good cause, and the answer accepted for filing.

The amount claimed in the formal complaint does not exceed \$30,000.00, and therefore the shortened method of procedure provided in the Rules of Practice (7 C.F.R. § 47.20) is applicable. Pursuant to this procedure, the verified pleadings of the parties are considered a part of the evidence in the case as is the Department's Report of Investigation. In addition, the parties were given an opportunity to file evidence in the form of sworn statements, however, neither party did so. Neither party filed a brief.

Findings of Fact

1. Complainant, R. S. Hanline & Co., Inc., is a corporation whose address is P.O. Box 494, Shelby, Ohio.
2. Respondent, M. Degaro Co., Inc., is a corporation whose address is 225 W. 2nd St., Cincinnati, Ohio. At the time of the transactions involved herein Respondent was licensed under the Act.
3. On or about the dates set forth below Complainant, acting through its employee, Fred Chaseley, sold to Respondent on an f.o.b. price after sale basis, and shipped to Respondent in Cincinnati, Ohio, perishable produce which Complainant invoiced as follows:

Inv. No. ;	Pkgs.	Commodity	Amount
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**Ship date;
Degaro's
lot No.**

7741;	540	Grapes	\$ 8,100.00
5/29/97;	360	Flame Grapes	<u>4,140.00</u>
164			\$12,240.00
8572;	1,408	Grapes	\$18,613.76
6/30/97;			
170			
8574;	1,120	Cantaloupe 12's	\$13,092.80
6/30/97;			
168			
8756;	1,488	Honeydews 5ct	\$ 3,720.00
7/01/97;			
173			
8745;	240	Cantaloupes 12's	\$ 840.00
7/01/97;			
171			
8920;	108	Cantaloupes 12's	\$ 864.00
7/25/97;	108	Cantaloupes 15's	864.00
251	122	Honeydews 5ct	671.00
	122	Honeydews 6ct	671.00
	180	Red Grapes	2,160.00
	1	Bin of Apples	284.50
	180	Thompson Grapes	1,980.00
	66	Honeydews 5ct	363.00
	54	Cantaloupes	432.00
	1	Bin of Apples	298.50
	1	Bin of Apples	<u>276.50</u>
			\$ 8,864.50
8937;	420	Peaches	\$ 2,751.00
7/17/97;			
213			
8950;	108	Cantaloupes 12's	\$ 864.00

7/26/97; 254	132	Honeydews 5ct	<u>726.00</u> \$ 1,590.00
8997; 7/28/97; 223	2,024	Flame Grapes	\$16,698.00
9086; 8/02/97; 272	110	Honeydews 6ct	\$ 605.00

4. Informal complaints were filed on February 27, 1998, March 23, 1998, and April 20, 1998, which dates were within nine months after the causes of action alleged therein accrued.

Conclusions

Complainant seeks to recover balances alleged to be due from respondent as to February 5, 2001 the transactions listed in Finding of Fact 3. The total of the amounts invoiced was \$79,015.06, and Complainant and Respondent agree that Respondent paid \$49,066.42. The balances that Complainant seeks to recover, therefore, amount to \$29,948.64.

Neither Complainant nor Respondent troubled themselves to submit much in the way of testimonial evidence. Complainant's submissions were all by Mike Feeney, who called himself Complainant's controller. Other than the knowledge that would naturally fall to a financial officer, nowhere is there any indication as to how Mr. Feeney knew the facts alleged in the submissions which he made. Respondent's submissions were all made by Linda M. Koscianski, and again there is no indication as to the foundation for the matters alleged in the submissions by Ms. Koscianski. The formal answer was signed by Ms. Koscianski, but it is not sworn to. However, the same document is in evidence as a result of being included in the Department's Report of Investigation. Mr. Feeney swore to the formal complaint, but there is no indication as to the foundation for the matters sworn to. Under the circumstances we can only take these submissions at face value, and accord them equal evidentiary standing.

In a letter to this Department dated May 1, 1998, and included as an exhibit to the Department's Report of Investigation, Ms. Koscianski set forth Respondent's defense to Complainant's action. This defense may be summarized as follows: All Respondent's dealings were with Fred Chaseley, who was at the time Complainant's representative. All the produce was purchased from Fred Chaseley on a price after sale basis. Prices were agreed with Mr. Chaseley, and paid in accord with his instructions. Invoices received from Hanline were discussed with Chaseley,

Hanline's employee, and paid in accord with instructions from Chaseley. Complainant never responded to any of the crucial assertions made by Ms. Koscianski. We conclude that Complainant has failed to prove by a preponderance of the evidence that it is entitled to the amounts claimed. The complaint should be dismissed.

Order

The complaint is dismissed.
Copies of this order shall be served upon the parties.
